

FILED
SCRANTON

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MAR - 3 2014

PER 
DEPUTY CLERK

JOSEPH BREELAND,

Plaintiff,

v.

SGT. COOK,

Defendant.

Civil Action No. 3:12-CV-2511

(Judge Kosik)

ORDER

AND NOW, THIS 3rd DAY OF MARCH, 2014, IT APPEARING TO THE
COURT THAT:

(1) Plaintiff, Joseph Breeland, a prisoner currently confined at the State Correctional Institution Greene ("SCI-Greene"), in Waynesburg, Pennsylvania, filed the instant civil rights action *pro se*, pursuant to 42 U.S.C. § 1983, on December 17, 2012 (Doc. 1);

(2) The action is currently assigned to Magistrate Judge Martin C. Carlson;

(3) On January 29, 2014, the Magistrate Judge issued a Report and Recommendation (Doc. 44) wherein he recommended that Defendant's Second Motion for Summary Judgment (Doc. 36) be denied;

(4) Specifically, the Magistrate Judge found that in viewing the facts in the light depicted by the videotape, and drawing all "reasonable inferences in favor of the non-moving party," there is a genuine issue of material fact as to whether Defendant Cook physically and sexually assaulted the Plaintiff. The Magistrate Judge disagreed with Defendant, who asserted that the videotape, which is of the aftermath of the alleged incident, blatantly contradicts Plaintiff's allegations. Instead, the Magistrate Judge found that the video actually highlights the factual disputes and provides a substantial basis of assessing the credibility of the parties' differing, factual narratives of events;

(5) There are no objections to the Magistrate Judge's Report and Recommendation;

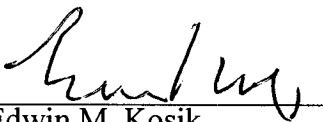
AND IT FURTHER APPEARING THAT:

(6) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a *de novo* review of his claim. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987); and

(7) We have considered the Magistrate Judge's Report and we concur with his recommendation.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

- (1) The Report and Recommendation of Magistrate Judge Martin C. Carlson is **ADOPTED** (Doc. 44);
- (2) Defendant's Second Motion for Summary Judgment (Doc. 36) is **DENIED**; and
- (3) A pretrial conference in this case shall be set forthwith.


Edwin M. Kosik
United States District Judge